

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of S.L., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

JAMES LOWRY,

Respondent-Appellant,

and

LIZABETH LOWRY-HAIGHT,

Respondent.

UNPUBLISHED

January 24, 2003

No. 234238

Muskegon Circuit Court

Family Division

LC No. 00-028707-NA

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

PER CURIAM.

Respondent-appellant as of right the trial court's order dismissing his petition for lack of jurisdiction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

First, respondent-appellant argues that the trial court denied him due process of law by dismissing his petition before allowing him to present any evidence and by further entering a final dispositional order without examining the case service plan as required by MCL 712A.18f (2) and MCR 5.973(A)(5). We do not agree.

Statutory construction and the interpretation of court rules are issues that this Court reviews de novo. *In re PAP*, 247 Mich App 148, 154; 640 NW2d 880 (2001); *In re Jagers*, 224 Mich App 359, 362; 568 NW2d 837 (1997). The primary goal of statutory construction is to ascertain and give effect to the Legislature's intent. *In re Jagers, supra* at 362. The language employed in the statute should be construed reasonably and with respect to the overarching purpose of the statute under consideration. *Id.* Where the language employed in the statute is clear and free of ambiguity, judicial construction is neither required nor permitted and incumbent upon the court is to apply the statute as written. *Id.*

MCL 712A.18f provides in relevant part that:

(1) If . . . *an agency advises the court against placing a child in the custody of the child's parent, guardian, or custodian*, the agency shall report in writing to the court what efforts were made to prevent the child's removal from his or her home or the efforts made to rectify the conditions that caused the child's removal from his or her home. . . .

* * *

(2) Before the court enters an order of disposition in a proceeding under section 2(b) of this chapter, the agency shall prepare a case service plan that shall be available to the court and all the parties to the proceeding. [Emphasis added.]

In accord with these statutory provisions, MCR 5.973(A)(5)(b) provides that, “[t]he court shall not enter an order of disposition until it has examined the case service plan” In the case at bar, neither the FIA nor any of its sub-agencies filed a petition relative to the minor children at issue herein and “advise[d] the court against placing [the children] with [the children’s mother.]” On the contrary, respondent-appellant filed the petition requesting the court to remove the minor children from their mother’s care and custody. A review of the record establishes that the trial court dismissed the petition filed by the FIA against respondent-appellant and the case proceeded solely on respondent-appellant’s petition against the children’s mother. Thus, the statutory provisions and court rule upon which respondent-appellant relies are inapposite. Notwithstanding, a review of the record demonstrates that FIA caseworker James Johnson did prepare a Protective Services-Service Agreement despite respondent-appellant’s failure to submit to a psychological examination until well after the trial on his petition commenced.

Although respondent-appellant vigorously asserts that the trial court erred by failing to examine a case service plan before entering its dispositional order, he cites absolutely no authority in support of his position. Certainly, it is well established that a party may not merely announce a position and thereafter leave it to this Court to discover and rationalize the basis for the claim, and then hunt for the requisite legal authority to either sustain or reject it. *Palo Group Foster Care, Inc v Department of Social Services*, 228 Mich App 140, 152; 577 NW2d 200 (1998). We find that the trial court did not err in this regard.

Next, respondent-appellant argues that the trial court erred in finding that the Muskegon Circuit Court could not acquire in personam jurisdiction over S.L.’s older sibling, L.L. To that end, respondent-appellant submits that his former wife abandoned L.L. in Muskegon County, the child came to live with him in Muskegon County, and the Ottawa Circuit Court entered temporary orders permitting L.L. to live with him in Muskegon County.

First and foremost, to assume jurisdiction, a trial court must find, by a preponderance of the evidence, that the minor child comes within the statutory mandates contained in MCL 712A.2. *In re Brock*, 442 Mich 101, 108-109; 499 NW2d 752 (1993). MCL 712A.2(a) provides for “[e]xclusive original jurisdiction superior to and regardless of the jurisdiction of another court in proceedings concerning a juvenile under 17 years of age *who is found within the county*” MCR 5.926(A) establishes that “[a]s used in MCL 712A.2, a child is ‘found within

the county' where the offense against the child occurred, where the offense committed by the juvenile occurred, or where the minor is physically present.”

In the case at bar, respondent-appellant alleged in his petition that his former wife's home, among other things, was an unfit place for L.L. to live. Taking the allegations contained in the petition as true, the “offense” against the child for purposes of MCR 5.926 occurred in Ottawa County, the county in which the children lived with their mother. Testimony adduced at the preliminary hearing demonstrated that at all times pertinent to the child protective proceedings, L.L. physically lived with her mother in Ottawa County. Consequently, the minor child was not “found” within Muskegon County as that term is used, understood and applied in MCL 712A.2. The language contained in the statute and court rule is unambiguous; thus, judicial construction is neither invited nor permitted. See *In re Hensley*, 220 Mich App 331, 333; 560 NW2d 642 (1996). The trial court did not err by declining to assert its jurisdiction and further declining to authorize the petition as to L.L.

Affirmed.

/s/ Jessica R. Cooper
/s/ Richard A. Bandstra
/s/ Michael J. Talbot